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IN THE FIJI COURT OF APPEAL
Civil Jurisdiction

Civil Appeal No. 44 of 1982

BETWEEN:

GURDIAL SINGH Appellant

- and -

SHIU RAJ Respondent

V.M. Mishra with K.P. Mishra for Appellant
K.N. Govind for Respondent

Date of Hearing: 25 November, 1982
Delivery of Judgment: 30th November 1982

JUDGMENT OF THE COURT

Marsack, J.A.

This is an appeal against the ruling of a Supreme Court Judge sitting in Chambers, dismissing appellant's claim for possession of a small area of land being part of a larger area for which appellant holds a freehold Certificate of Title.

The facts may be shortly set out. Respondent served for some years as housegirl to appellant's father who was then the registered proprietor of some 27 acres

comprised in Certificate of Title 10576. Respondent has been in possession of some 20 perches of this land since 1960, and is occupying a house which she built thereon. For the first few years she paid an annual rent of $20 for this section, to appellant's father. He died in 1965. No rent has been paid since 1966 though respondent says that she has tendered it. Appellant states that no such tender has been made. The learned Judge finds that she has lived on this section for 22 years, and no serious attempts have been made to evict her.

Appellant issued a summons under Section 169, Land Transfer Act, calling on respondent to show cause why she should not give up possession of the land in question. Evidence was given by way of affidavits from each party, and counsel were heard on the summons. The trial Judge held that respondent had established an estoppel, a right to remain on the land. This appeal is brought against that judgment.

The grounds of appeal filed were very lengthy but do not require setting out in detail here, as at the hearing before this Court counsel for appellant confined his argument to one ground: that serious questions of law and fact had been raised and they should have been determined at a full hearing before the Court.

In his argument counsel referred to clause 11 of the affidavit of respondent filed before the trial Judge which reads:

> "11. THAT I believe that substantial questions of law and fact are involved in this matter."

But this point was raised by the respondent, not the appellant. In his affidavit in reply appellant makes no reference to this point.

An unusual position arises here. Appellant filed a summons brought under Section 169 of the Land Transfer Act, calling on respondent to attend before a Judge in Chambers to show cause

> "...why the said Defendant should not give up possession to the Plaintiff of the part of the area of 27 acres 7 perches and eight-tenths of a perch comprised in the Certificate of Title No. 10576 more particularly known as "Navaro (part of)" and being Lot 1 on Deposited Plan No. 2590."

He filed an affidavit in support. At the hearing before the learned Judge counsel for respondent submitted that the issues were such as should be tried in Court and not on affidavits. Counsel for appellant replied that the basic facts were not in dispute. The learned Judge then continued to hear argument, to consider the affidavits, and to give a ruling as appellant had asked. Now it is appellant who contends that the matter should have been sent on to Court for a full hearing, though he concedes that he made no such submission to the trial Judge; and it is respondent who submits that the learned Judge acted correctly in determining the matter himself.

In the course of his argument counsel for appellant submitted that the learned Judge had exceeded his powers under Sections 169, 171 and 172 of the Land Transfer Act. But Sectior 169 merely lays down what persons may issue a summons calling on an occupier to show cause why he should not give up possession to the applicant; it in no way sets out the powers or the duties of the Judge before whom the summons calls for appearance. Section 172 empowers the trial Judge to dismiss the summons if the person summoned does show cause, or make any order he may think fit. We can find nothing in the argument or the affidavit evidence to show that the trial Judge has exceeded the powers given him by the Act; he has in fact found that the respondent has shown cause, and accordingly has dismissed the summons.

Counsel for the appellant drew attention to the Supreme Court Practice 1967, Order 14, Rule 4(3) that the Court may give defendant leave to defend the action with respect to the claim to which the application applies. This would necessarily involve a full trial of the action.

But this formed no part of his case before the learned trial Judge. In any event, Order 14 governs a procedure quite unrelated to that under Section 169, and quite irrelevant to the issues now before this Court.

Counsel for appellant further referred to the judgment in Taylor Fashions Ltd. v. Liverpool Victoria Trustees Co. Ltd. 1981, All E.R. 897 where at page 918 Oliver J. cites a passage from a judgment of Lord Denning M.R. in Moorgate Mercantile Ltd. v. Twitchings:

> "Estoppel is not a rule of evidence. It is not a cause of action. It is a principle of justice and of equity. It comes to this. When a man, by his words or conduct, has led another to believe in a particular state of affairs, he will not be allowed to go back on it when it would be unjust or unequitable for him to do so."

Counsel's argument is that the facts relating to the basis of respondent's occupation were definitely in dispute.

The powers of the Court under Section 169 have been considered in several cases before this Court. In Shyam Lal v. Schultz (1972) 18 F.L.R. 152 the learned Vice-President said at Page 154:

> "I would only add, on the argument that the procedure authorised by section 169 of the Land Transfer Act, 1971, was not appropriate, that I am in sympathy with the proposition that complicated questions of fact (particularly where there are allegations of fraud) cannot adequately be investigated and dealt with on a summary proceeding in Chambers. The present case, however, involved virtually no contested relevant fact and the learned judge in my opinion rightly entertained and dealt with it."

Other references were made in Jamnadas v. Public Trustee F.C.A. 39/72 and Azmat Ali v. Mohammed Jalil F.C.A. 44/81. Certainly counsel's argument in the present case was based on a submission that serious questions of law and fact were raised, and should not have been dealt with in summary proceedings. But it must not be overlooked

that, as we have pointed out, it was appellant who chose this form of proceeding; and at the hearing his counsel told the trial Judge that the basic facts were not in dispute.

At the hearing there was no dispute as to the occupation by respondent for 22 years of the land in question, without any attempt to evict her except a notice to quit dated 31 March, 1982. Nor is it denied that her entry into the land was made with the approval of the appellant's father, and later of the appellant himself. The items in dispute fall under only two headir :s: whether rent was offered by respondent and refused by appellant, and whether appellant consented to the erection of her house. In her affidavits respondent swore the affirmative in each case, while appellant's answer was an emphatic negative. But neither of these questions lies at the root of the matter. In our opinion all that the learned Judge was required to do in these proceedings was either to make an order for possession or dismiss the summons; on the evidence before him the learned Judge dismissed the summons and in so doing concluded that appellant was estopped from denying that respondent had lived on the land for over 20 years to the knowledge of appellant and without any effort on his part to evict her. On the facts of this case and particularly in view of appellant's insistence that the matter be dealt with under the summary provisions of the Land Transfer Act, the learned trial Judge was entitled to deal with this matter in the manner in which he did although we must say that it was also open to him had he so decided to order a full trial before the Court.

In the result we must hold that the trial Judge was fully justified in coming to a decision on the documents and argument submitted, and nothing has

been put forward to show that that decision was wrong. Accordingly the appeal is dismissed, with costs to the respondent, the amount to be fixed by the Chief Registrar if not agreed upon by the parties.

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Vice-President

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Judge of Appeal

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Judge of Appeal